

Comments on Proposed Rule Making re The Junk Fax Prevention Act

The San Jose Mercury News, the major newspaper serving Silicon Valley (Santa Clara County, California) serves a readership of several million people and tens or hundreds of thousands of small businesses.

On March 2, 2006, the Mercury News published an editorial, which I believe accurately reflects the views of 99+% of these consumers and small businesses, noting that *only strict rule-making by the FCC re the JFPA can prevent complete gutting of the TCPA's protection from unwanted faxes. "The Federal Communications Commission may be able to offer a modicum of protection to fax machine owners by putting some teeth in what's left of the federal junk-fax ban."*

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Prepare for return of junk-fax deluge
JUDGE'S RULING REMOVES LEGAL ROADBLOCK TO UNWANTED ADS

Mercury News Editorial

Californians who own fax machines should brace themselves for an onslaught of junk. The pitches for too-good-to-be-true mortgages, no-name health insurance, impossibly discounted vacation cruises and other unsolicited and unwanted offers are poised to start cranking up again, 24/7.

A federal judge in Sacramento on Monday dismantled the last real defense that individuals, business owners, non-profit organizations and other institutions have against junk faxes. It's an invitation to advertisers to help themselves to the paper, toner and fax lines that Californians pay for.

A 1991 federal law that banned junk faxes slowed the flood of unwanted fax ads to a manageable trickle. But last year, Congress gutted that law after

lobbyists for big business claimed it prevented them from communicating with their customers. In response, the California Legislature passed its own junk-fax ban. U.S. District Judge Morrison England voided California's law, declaring it in conflict with the federal law.

Interestingly, England is well aware that junk faxes are not merely a nuisance. "The court recognizes that unsolicited advertisements transmitted via facsimile machines cost recipients untold resources in the forms of time and money," he wrote.

There's a simpler way to describe this "I'll make you pay for ads you don't want" marketing model: theft.

The most efficient fax thieves -- blast-fax companies that can spew thousands of ads each day -- are certain to start targeting Californians again. Across the country, the volume of junk faxes has grown an estimated 30 to 40 percent in the seven months since the federal ban was gutted, says to Robert Biggerstaff, an attorney who runs www.tcpalaw.com, a Web site that tracks junk-fax lawsuits.

The days when a constant flow of junk faxes forced a hospital to shut down fax machines critical to patient care may soon be back upon us. And while e-mail and other technologies are increasingly replacing faxes, millions of businesses, especially small businesses, still rely on their fax machines.

The Federal Communications Commission may be able to offer a modicum of protection to fax machine owners by putting some teeth in what's left of the federal junk-fax ban. The agency is expected to issue new rules by April. And California's attorney general should consider appealing England's ruling.

In the meantime, those whose fax machines are rendered useless can thank the U.S. Chamber of Commerce: After getting Congress to do its bidding, it sued to end California's junk-fax ban. Online Extra

For more information on junk-fax regulations and instructions on how to file complaints, visit mercurynews.com/opinion.

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